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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,074	04/13/2004	Dan L. Hankinson	61992	3984
24230	7590	12/19/2005	EXAMINER	
HARSHAW RESEARCH INCORPORATED			COCKS, JOSIAH C	
P O BOX 418			ART UNIT	
OTTAWA, KS 66067			PAPER NUMBER	

3749

DATE MAILED: 12/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/823,074	Applicant(s) HANKINSON, DAN L.	
	Examiner Josiah Cocks	Art Unit 3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 April 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>4/13/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because the drawings include handwritten reference characters that are of poor line quality and difficult to read. See 37 CFR 1.84(l). Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

INFORMATION ON HOW TO EFFECT DRAWING CHANGES

Replacement Drawing Sheets

Drawing changes must be made by presenting replacement sheets which incorporate the desired changes and which comply with 37 CFR 1.84. An explanation of the changes made must be presented either in the drawing amendments section, or remarks, section of the amendment paper. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). A replacement sheet must include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of the amended drawing(s) must not be labeled as "amended." If the changes to the drawing figure(s) are not accepted by the examiner, applicant will be notified of any required corrective action in the next Office action. No further drawing submission will be required, unless applicant is notified.

Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and within the top margin.

Annotated Drawing Sheets

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A marked-up copy of any amended drawing figure, including annotations indicating the changes made, may be submitted or required by the examiner. The annotated drawing sheet(s) must be clearly labeled as "Annotated Sheet" and must be presented in the amendment or remarks section that explains the change(s) to the drawings.

Timing of Corrections

Applicant is required to submit acceptable corrected drawings within the time period set in the Office action. See 37 CFR 1.85(a). Failure to take corrective action within the set period will result in ABANDONMENT of the application.

If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings MUST be filed within the THREE MONTH shortened statutory period set for reply in the "Notice of Allowability." Extensions of time may NOT be obtained under the provisions of 37 CFR 1.136 for filing the corrected drawings after the mailing of a Notice of Allowability.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 5, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S.

Patent No. 2,642,796 to Bore ("Bore").

Bore discloses in the specification and Figs. 1-7 an invention in the same field of endeavor as applicant's invention and as described in applicant's claims 1, 5, and 10. In particular, Bore shows a food roasting apparatus that includes an elongate rigid rod (13) with a handle (14) and a wire-framed basket (at least 19 and 24) attached to the end of the rod. The rod forms a longitudinal axis and the basket is also considered to defining some longitudinal axis.

In regard to claim 5, handle 14 is made of a non-heat-conducting material (see col. 2, lines 4-6).

In regard to claim 10, the basket is connected the rod via hooks and eyelets and are considered removable.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2-4, 6, 12, and 15 rejected under 35 U.S.C. 103(a) as being unpatentable over Bore as applied above in view of U.S. Design Patent No. D474,379 to Nelson et al. ("Nelson") (cited by applicant).

Bore does show that the rod has an offset portion (unnumbered bent portion leading to eyelet 37, see Fig. 1) and shows a hinged basket assembly with two members (see Figs. 1-7), a trigger (34), and the recited linkage (at least 32 and 35). However, Bore possibly does not show that the basket includes a continuous side wall and a closed distal end and open proximal end or that the longitudinal axis of the basket is inline with the rod longitudinal axis.

Nelson teaches a food roasting apparatus in the same field of endeavor as both applicant's invention and Bore. In Nelson, a hinged basket/cage is shown that is formed of a hollow tube having a continuous side wall with a closed distal end and open proximal end (see Figs. 1 and 6

and DESCRIPTION Section). Further, the basket/cage is arranged such that the rod and basket have longitudinal axes that are in-line (see at least Fig. 1).

Therefore, in regard to claims 2-4, 6, 12, and 15, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the basket of Bore to incorporate the structure of the basket of Nelson as this structure is recognized in the art to desirably provide a moveable jaw arrangement similar to Bore for grasping and cooking hotdogs (see Nelson, DESCRIPTION).

6. Claims 7 and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bore and Nelson as applied to claims 6, 12, and 15 above, and further in view of U.S. Patent No. 2,066,185 to Miller et al. ("Miller").

In regard to claims 7, 16, and 18, Bore shows the recited linkage structure including a pushrod (32), a rotating arm, a fork, a link (see at least the linkage structure illustrated at the upper portions of Figs. 1 and 2). However, Bore does not show a spring connected to the trigger as recited.

Bore also possibly does not show that the second basket member is slidably coupled to the first basket member as recited in applicant's claim 17.

Miller teaches a food roasting apparatus in the same field of endeavor as applicant's invention and Bore. In Miller, the jaw/basket portions (9 and 4) are slidably engaged with one another. Further, a spring (12) is included to bias the pushrod (2) (see col. 1, line 46 through col. 2, line 5).

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Therefore, in regard to claims 7 and 16-18, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the apparatus; of Bore to incorporate the sliding engagement of Miller to desirably provide movement of the jaw/basket portions to engage a food item in a manner known in the art, and to incorporate the spring of Miller to desirably provide tension for the jaws to securely engage the contained food item (see Miller, col. 2, lines 1-2 and 25-35).

7. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bore as applied to claim 1 above in view of U.S. Patent No. 5,666,940 to Kreiter ("Kreiter").

Bore discloses all the limitations of claims 8 and 9 except for the sleeve, post and clamp assembly recited.

Kreiter teaches a food cooking apparatus in the same field of endeavor as applicant's invention and Bore. In Kreiter, a cooking implement (16) is attached to stand that includes a post (10) for ground penetration and includes a slidable sleeve (42) and clamp assembly (20).

Therefore, in regard to claim 8 and 9, it would have been obvious to a person of ordinary skill in the art to modify Bore to incorporate the stand structure of Kreiter for the desirable purpose of providing an adjustable arrangement for a cooking assembly for cooking food items over an outdoor open fire (see Kreiter, col. 1, lines 5-43).

8. Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bore in view of Nelson as applied to claim 12 above in view of U.S. Patent No. 5,666,940 to Kreiter ("Kreiter").

Bore and Neslon discloses all the limitations of claims 13 and 14 except for the sleeve, post and clamp assembly recited.

Kreiter teaches a food cooking apparatus in the same field of endeavor as applicant's invention and Bore. In Kreiter, a cooking implement (16) is attached to stand that includes a post (10) for ground penetration and includes a slidable sleeve (42) and clamp assembly (20).

Therefore, in regard to claim 13 and 14, it would have been obvious to a person of ordinary skill in the art to modify Bore to incorporate the stand structure of Kreiter for the desirable purpose of providing an adjustable arrangement for a cooking assembly for cooking food items over an outdoor open fire (see Kreiter, col. 1, lines 5-43).

9. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bore as applied to claim 1 above in view of U.S. Patent No. 2,935,982 to Otis ("Otis").

Bore discloses all the limitations of claim 11 except that the basket is a generally flat configuration with four side walls and closed distal end and open proximal end.

Otis teaches a food cooking apparatus in the same field of endeavor as applicant's invention and Bore. In Otis, a food item (hotdogs 14) are cooked over a fire in a generally flat wire basket arrangement (12) with four walls (see Fig. 1). The distal end to rod (22) includes horizontal bars that are considered to close the basket whereas the proximal end does not and is considered open. Otis further notes that the basket may be varied in shape, size and structure as desired (see col. 2, lines 4-12).

Therefore, in regard to claim 11, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Bore to incorporate the basket structure

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of Otis as a person of ordinary skill in the art would recognize from the teachings of Otis that the structure of basket may be varied based on the type of food cooked or the type of cooking desired.

10. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bore in view of Nelson as applied to claim 12 above in view of U.S. Patent No. 2,935,982 to Otis ("Otis").

Bore and Nelson teach all the limitations of claim 19 except that the basket is a generally flat configuration with four side walls and closed distal end and open proximal end.

Otis teaches a food cooking apparatus in the same field of endeavor as applicant's invention and Bore. In Otis, a food item (hotdogs 14) are cooked over a fire in a generally flat wire basket arrangement (12) with four walls (see Fig. 1). The distal end to rod (22) includes horizontal bars that are considered to close the basket whereas the proximal end does not and is considered open. Otis further notes that the basket may be varied in shape, size and structure as desired (see col. 2, lines 4-12).

Therefore, in regard to claim 19, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Bore to incorporate the basket structure of Otis as a person of ordinary skill in the art would recognize from the teachings of Otis that the structure of basket may be varied based on the type of food cooked or the type of cooking desired.

Conclusion

11. This action is made non-final. A THREE (3) MONTH shortened statutory period for reply has been set. Extensions of time may be available under the provisions of 37 CFR

1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent Nos. 2,486,496 (Romazon), 2,912,973 (Lucas), 2,977,953 (Dowdy), 5,603,533 (Ratte), and Swiss patent document No. 420 534 are cited to further show the state of the art concerning food roasting apparatus structure.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Josiah Cocks whose telephone number is (571) 272-4874. The examiner can normally be reached on weekdays from 8:00 AM to 5:30 PM.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg, can be reached at (571) 272-4828. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://portal.uspto.gov/external/portal/pair>. Any questions on access to the Private PAIR system should be directed to the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

jcc
December 11, 2005



JOSIAH COCKS
PRIMARY EXAMINER
ART UNIT 3749